IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JENNIFER MIZELL, MARIA PAULDING, KATHLEEN PEAPPLES, VICTORIA ROSS, and NATHAN SIMPSON, individually and on behalf of those similarly situated, **Plaintiffs,** **v.** **THE UNIVERSITY OF PITTSBURGH MEDICAL CENTER,** **Defendant.**	**Civil Action No. 1:24-cv-00016-SPB** **Electronically Filed**

UPMC'S RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

In their Notice of Supplemental Authority, ECF No. 58, Plaintiffs cite the recent summary judgment decision in *Federal Trade Commission v. Meta Platforms, Inc.*, No. 20-3590, 2024 WL 4772423 (D.D.C. Nov. 13, 2024). There, Meta argued that the FTC was required to "demonstrate an impact on consumer welfare via measurable . . . price or output changes" to show that an acquisition was exclusionary at summary judgment. *Id*. at *23–24. But the district court instead reasoned that, under the circumstances of that case, an alleged monopolist's exclusion or acquisition of a firm that "'reasonably constitute[s] a nascent threat'" could itself harm market competition by "eliminat[ing] the possibility that one firm would have entered a new market and created procompetitive effects." *Id*. at *27 (quoting *United States v. Microsoft Corp.*, 253 F.3d 34, 79 (D.C. Cir. 2001) (en banc)).

Plaintiffs claim this holding is "highly relevant to the parties' current dispute." ECF No. 58 at 2. For a number of reasons that UPMC can explain at argument, the *Meta Platforms* holding is inapposite. UPMC's motion to dismiss is based, in relevant part, on the lack of plausible allegations showing that any of the listed acquisitions harmed competition. That is a critical

distinction between *Meta Platforms* and the case at bar: In *Meta*, the FTC had a plausible theory for how the acquisitions at issue harmed competition in the relevant market—intentionally targeting and eliminating future competitors. 2024 WL 4772423 at *27. In contrast, Plaintiffs have merely listed mergers in the Amended Complaint without alleging a connection between them and any alleged competitive harm in any plausibly defined market. *Compare id.* at *27–28 (explaining that acquisitions of Instagram and WhatsApp were "emphatically not the merger of rivals in a competitive industry, but the acquisition of . . . nascent competitor[s] by the dominant firm in a market protected by entry barriers") (emphasis in original), *with* UPMC Reply at 13 ("Plaintiffs never explain, for example, how acquisitions in regions where UPMC had no other facilities supposedly harmed competition."), *and* Pls. Opp. at 19 (conceding that Plaintiffs are "not alleging that the acquisitions themselves are exclusionary").

UPMC will be prepared to address this decision further as needed at argument on January 28, 2025.

Dated: December 4, 2024

Respectfully submitted,

/s/ *Rebekah B. Kcehowski*

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CERTIFICATE OF SERVICE

I hereby certify that this Response to Plaintiffs' Notice of Supplemental Authority was filed and served on counsel of record via the United States District Court for the Western District of Pennsylvania's CM/ECF system.

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